

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| FREEPORT-MCMORAN CHINO MINES |) | File No. 0005880615 |
| COMPANY |) | |
| |) | |
| Request for Waiver of Section 90.259(a) of the |) | |
| Commission's Rules |) | |

ORDER

Adopted: April 23, 2014

Released: April 24, 2014

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned application and associated request for waiver filed by Freeport-McMoRan Chino Mines Company (Freeport-McMoRan).¹ Freeport-McMoRan seeks a waiver of the antenna height limit in Section 90.259(a)(4) of the Commission's Rules for secondary telemetry operations in the 217-220 MHz band.² Thomas Kurian (Kurian), who holds the geographic license for Automated Maritime Telecommunications System (AMTS) Station WQCP809 for the frequencies requested by Freeport-McMoRan, filed a petition to deny the application.³ For the reasons set forth below, we deny the petition and grant the waiver request, and will grant the application as discussed herein.

2. *Background.* AMTS stations have primary status in the 217/219 MHz portion of the 217-220 MHz band.⁴ Section 90.259 of the Commission's Rules authorizes telemetry use of the 217-220 MHz band on a secondary basis, but limits the maximum antenna height above average terrain (HAAT) to 152 meters.⁵

3. Freeport-McMoRan seeks authorization to operate a telemetry system at its mining operations in New Mexico to monitor meteorological stations to detect storms and lightning, and water pressure in tailings to detect failures in dams, in order to ensure personnel and public safety in and around Freeport-McMoRan's mining area.⁶ It states that the proposed locations in Grant County are generally higher than the surrounding remote desert terrain, resulting in HAAT of more than 152 meters.⁷ It seeks a waiver of the HAAT limit for the three locations in order to achieve the necessary coverage and signal

¹ FCC File No. 0005880615 (filed Aug. 1, 2013, amended Feb. 4 and 24, 2014), Revised Waiver Request (filed Feb. 4, 2014) (Revised Waiver Request).

² 47 C.F.R. § 90.259(a)(4).

³ Petition to Deny, Petition to Dismiss, and Section 1.41 Request (filed Feb. 14, 2014) (Petition). Freeport-McMoRan filed an opposition on February 24, 2014. Opposition to Petition to Deny of Dismiss (filed Feb. 24, 2014) (Opposition). Kurian did not file a reply.

⁴ See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Notice of Proposed Rule Making*, ET Docket No. 00-221, 15 FCC Rcd 22657, 22662 ¶ 11 (2000).

⁵ See 47 C.F.R. § 90.259(a), (a)(4).

⁶ See Revised Waiver Request at 1.

⁷ See *id.* at 2.

propagation for its telemetry system.⁸ It states that it is not aware of any facts suggesting that the proposed operations would cause harmful interference to any facilities of Station WQCP809.⁹

4. Kurian opposes the application and waiver request due to potential interference to the operation of Station WQCP809.¹⁰ He notes that the proposed operations will cover portions of Station WQCP809's geographic area, but does not indicate whether there are any current or planned AMTS operations in the vicinity of Freeport-McMoRan's proposed facilities.¹¹ Freeport-McMoRan subsequently amended its application to reduce the requested power and clarify that it would employ directional antennas with a down-tilt, reducing the proposed coverage area.¹²

5. *Discussion.* Kurian suggests that entities wishing to conduct 217-220 MHz secondary telemetry operations must negotiate spectrum rights from the primary co-channel geographic licensee.¹³ The Commission has already settled this issue. In 2002, after it had proposed to utilize geographic licensing and competitive bidding to license AMTS spectrum¹⁴ and shortly before it adopted those proposals,¹⁵ the Commission affirmed the continued licensing of telemetry operations in this band on a secondary basis.¹⁶ Consequently, we reject Kurian's suggestion that authorizing secondary telemetry operations on AMTS spectrum is improper.¹⁷

6. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

7. The HAAT restriction was designed to limit interference from secondary telemetry

⁸ *See id.*

⁹ *See id.*

¹⁰ *See* Petition at 1-2.

¹¹ *See id.*

¹² *See* Explanation of Additional Amendments for File No. 0005880615 at 1 (filed Feb. 24, 2014).

¹³ *See* Petition at 2.

¹⁴ *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22601-02 ¶ 30 (2000).

¹⁵ *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

¹⁶ *See* Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order and Memorandum Opinion and Order*, ET Docket No. 00-221, 17 FCC Rcd 368, 383 ¶ 33 (2002); *see also* Amendments to Parts 1, 2, 27, and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, 17 FCC Rcd 9980, 10048 ¶¶ 185-186 (2002) (*27 MHz Service Rules Report and Order*) (denying request to limit secondary telemetry to the 218-219 MHz portion of the 217-220 MHz band).

¹⁷ *See* CGG Veritas Land, Inc., *Order*, 24 FCC Rcd 4641, 4643 ¶ 6 (WTB MD 2009) (*CGG Veritas*), *recon. dismissed, Order on Reconsideration*, 25 FCC Rcd 4897 (WTB MD 2010), *review denied, Memorandum Opinion and Order*, 26 FCC Rcd 2493 (2011).

¹⁸ 47 C.F.R. § 1.925(b)(3).

operations to primary operations.¹⁹ Freeport-McMoRan argues that its proposed facilities, even with the waiver for HAAT, would pose no more interference to Station WQCP809 than a conforming telemetry system would pose without a waiver.²⁰ It selected its transmitter sites based upon access to permanent power sources and has proposed operation with reduced effective radiated power (ERP), directional antennas and additional mechanical beam-tilt. These actions result in facilities that closely resemble the same coverage and interference potential as stations that meet the ERP/HAAT requirements of Section 90.259. Accordingly, we find that Freeport-McMoRan has demonstrated that the underlying purpose of the HAAT limit would not be served by application to the instant case.²¹ We also conclude that a waiver grant is in the public interest, because it will improve the safety and environmental impact of Freeport-McMoRan's mining operations.

8. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Petition to Deny filed by Thomas Kurian on February 14, 2014 IS DENIED.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Freeport-McMoRan Chino Mines Company on August 1, 2013 and revised on February 4, 2014, IS GRANTED, and application FCC File No. 0005880615 SHALL BE PROCESSED in accordance with this *Order*, ON THE FOLLOWING CONDITIONS: (1) at location 1 the antenna will be mounted with 12 degrees of beam tilt below the horizon; (2) at location 3 the antenna will be mounted with 12 degrees of beam tilt below the horizon; and (3) at location 5 the antenna will be mounted with 10 degrees of beam tilt below the horizon.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁹ See *27 MHz Service Rules Report and Order*, 17 FCC Rcd at 10035 ¶ 141.

²⁰ See Opposition at 3 and Attachment 1.

²¹ See *CGG Veritas*, 24 FCC Rcd at 4643-44 ¶ 8; *Town of Cherokee*, *Order*, 24 FCC Rcd 3213, 3214 ¶ 4 (WTB MD 2009).